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Report of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples

(New York, 17-19 January 2005)

Summary

The International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples was convened in accordance with Economic and Social Council decision 2004/287 of 22 July 2004, following a recommendation of the Permanent Forum on Indigenous Issues at its third session. The principle of free, prior and informed consent had been identified as a major challenge by the Forum at its first, second and third sessions. In response to the Council's decision, the Workshop was held from 17 to 19 January 2005.

The Workshop was attended by 67 experts and observers from the United Nations system and other intergovernmental organizations, Governments and indigenous organizations. The Workshop examined the international and domestic instruments and practices relevant to the principle of free, prior and informed consent, heard examples of the application of the principle, identified challenges, and made recommendations about free, prior and informed consent and indigenous peoples.

In its conclusions and recommendations, the Workshop identifies elements of a common understanding of free, prior and informed consent and indigenous peoples, promoting better methodologies regarding free, prior and informed consent and indigenous peoples for the consideration of the Forum at its fourth session.

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Introduction

1. At its first, second and third sessions, the Permanent Forum on Indigenous Issues had identified as a major methodological challenge the application of the principle of free, prior and informed consent concerning indigenous peoples. Following the recommendation of the Forum at its third session, the Economic and Social Council, in its decision 2004/287, of 22 July 2004, decided to authorize a technical three-day workshop on free, prior and informed consent, with the participation of representatives of the United Nations system and other interested intergovernmental organizations, experts from indigenous organizations, interested States and three members of the Forum, and requested the Workshop to report to the Forum at its fourth session, under the special theme of the session. The Workshop was organized by the secretariat of the Forum.

I. Organization of work

A. Attendance

2. The following Forum members attended the Workshop: Mr. Wilton Littlechild, Ms. Ida Nicolaisen and Mr. Parshuram Tamang. Ms. Victoria Tauli-Corpuz attended as member of the Forum and an expert from the Tebtebba Foundation.

3. The Workshop was attended by experts from the following 20 entities of the United Nations system and other intergovernmental organizations: Division for the Advancement of Women of the United Nations Secretariat, Department of Political Affairs of the United Nations Secretariat, Department of Public Information of the United Nations Secretariat, Department of Economic and Social Affairs of the United Nations Secretariat, European Community, Food and Agriculture Organization of the United Nations (FAO), Inter-American Development Bank (IADB), International Fund for Agricultural Development (IFAD), International Labour Organization (ILO), Office of the United Nations High Commissioner for Human Rights, secretariat of the Convention on Biological Diversity, secretariat of the United Nations Forum on Forests, United Nations Development Programme (UNDP), United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Children's Fund (UNICEF), United Nations Development Fund for Women (UNIFEM), United Nations Working Group on Indigenous Populations, World Health Organization (WHO), World Intellectual Property Organization (WIPO) and World Bank.

4. The Workshop was also attended by observers from 13 Member States, and the Holy See and experts from 12 indigenous organizations. A total of 67 persons attended. The attendance list is contained in annex III to the present report.

B. Documentation

5. The participants had before them a draft agenda, a draft programme of work, and documents prepared by participating experts. Documentation made available for the Workshop is listed in annex II. The documentation will be available on the web site of the secretariat of the Permanent Forum on Indigenous Issues (http://www.un.org/esa/socdev/unpfii/panels/freeprior_training.htm).

C. Opening of the meeting

6. At the opening of the Workshop, Mr. Johan Schölvinck, Director, Division for Social Policy and Development, Department of Economic and Social Affairs of the United Nations Secretariat, made an opening statement. Ms. Elsa Stamatopoulou, Chief, secretariat of the Permanent Forum on Indigenous Issues, Division for Social Policy and Development, Department of Economic and Social Affairs, made an introductory statement.

D. Election of officers

7. Mr. Wilton Littlechild, Forum member, was elected Chairperson. Mr. John Scott, secretariat of the Convention on Biological Diversity, was elected Rapporteur.

E. Adoption of the agenda and programme of work

8. The Workshop adopted its agenda on the basis of the draft agenda submitted by the Secretariat. The agenda is contained in annex I.

9. The Workshop was conducted in plenary meetings. Annex I also contains the programme of work, and includes the names of participants who served as panellists.

F. Adoption of the conclusions and recommendations

10. On 19 January 2005, the Workshop adopted, by consensus, the conclusions and recommendations contained in section III below.

G. Closure of the Workshop

11. The meeting was closed after the conclusions and recommendations were adopted in the final plenary held on 19 January 2005.

II. Observations

Goals and expectations

12. At the outset, it was noted that the purpose of the Workshop was not to conduct a standard-setting exercise, but to develop realistic and concise methodologies on how the principle of free, prior and informed consent (FPIC) should be respected in activities relating to indigenous peoples. It was noted that free, prior and informed consent was viewed as a principle based on the human rights approach to development. Two types of projects were identified that required the application of free, prior and informed consent: those that were specifically addressed to indigenous peoples; and those that affected indigenous peoples, but were not directly addressed to them.

13. The Workshop was designed to provide a general overview of the current understanding or understandings of the principle of free, prior and informed consent as a methodological issue. It was also designed to discuss policy frameworks on or relevant to free, prior and informed consent at the inter-agency level, including the Common Country Assessment and United Nations Development Assistance Framework (UNDAF), the Poverty Reduction Strategy Papers (PRSPs) and the Millennium Development Goals. The Workshop also approached the matter in relation to sectoral subjects, and focused on examples of the application of methodologies of free, prior and informed consent at the national and international levels. It was noted that the aim of the Workshop was to draw lessons and identify challenges in the application of free, prior and informed consent, outline the elements of a common inter-agency approach, and prepare and adopt recommendations for the consideration of the Permanent Forum on Indigenous Issues.

Overview of free, prior and informed consent

14. Some participants observed that methodologies on free, prior and informed consent should have as their basic objective the improvement of the living conditions of indigenous peoples and that free, prior and informed consent should cover all matters connected with the life of indigenous peoples.

15. A number of participants consistently stated that the principle of free, prior and informed consent encompassed not only a procedure to be elaborated, but also a right associated with indigenous peoples' right to self-determination, treaties and indigenous peoples' rights to lands, territories and natural resources. Procedures concerning free, prior and informed consent should recognize indigenous customary law where this is relevant, and address the issue of who represents indigenous peoples.

16. Addressing the question whether free, prior and informed consent is a stand-alone right, some participants noted that it may be a procedural right with respect to advancing the exercise or implementation of the right to self-determination, treaties and other human rights.

17. Some participants also viewed free, prior and informed consent as an evolutionary process that could lead to co-management and decision-making by indigenous peoples on programmes and projects affecting them. It was stressed that free, prior and informed consent was particularly relevant for the prevention of conflict and for peacebuilding.

18. A participant from the Millennium Campaign Office emphasized that free, prior and informed consent as a principle and a practice was essential in efforts directed towards the achievement of the Millennium Development Goals. It is important to view the Millennium Development Goals within the overall context of the United Nations Millennium Declaration,[1] which advocates tolerance, respect for nature, fundamental human rights, and democracy, to all of which free, prior and informed consent is central.

19. Some participants were concerned that in the rush to achieve ambitious development targets, Governments might ignore the vital principle of free, prior and informed consent. It was pointed out with regret that the participation of indigenous

peoples in the Millennium Development Goal setting and implementation process, particularly at the national level, was markedly minimal. Examples were key in showing how certain Millennium Development Goals would not be achieved without indigenous peoples' participation.

20. The implementation of the principle of free, prior and informed consent presented a number of practical problems. A number of questions were raised in the presentations on how the principle of free, prior and informed consent could be implemented, including the following:

- Who or which institutional entity provides consent in a community when the latter is being consulted?
- Should the collective consent of indigenous peoples be considered more important than the individual property rights of non-indigenous persons who may occupy the same territory? And how should such conflicts be dealt with?
- Which actor(s) should be responsible for providing information and impact assessments on projects that affect indigenous communities?
- What type of documentation and information should be provided to indigenous communities?
- How should the lack of awareness and capacity among those involved in free, prior and informed consent processes be addressed?
- How can the disparity in resources, and power imbalances between indigenous peoples and private developers, or between indigenous peoples and the State, be addressed?
- How should indigenous communities benefit from their contribution of traditional knowledge to conservation and sustainable use of resources?
- What mechanisms for seeking redress should be available to indigenous peoples if free, prior and informed consent processes have not been followed?

21. A number of examples were put forward to illustrate the challenges that free, prior and informed consent poses. Examples of non-participation, inadequate consultations, or non-consent were cited, as in cases of the building of hydroelectric dams. Governments of some countries in the Latin American region freely issued operating licences for projects in indigenous territories but indigenous peoples did not participate in the distribution of profits therefrom. Special challenges to the principle of free, prior and informed consent existed in Africa, given the non-recognition of indigenous peoples by a number of States. A key question was whether discussions centred around distribution of benefits would take place only after there was a final product, or even prior to the development of a product.

22. It was pointed out that despite the complexities of statutory consultations and tribal systems, indigenous peoples should have the right to consent, and the right to refuse consent, and that the private sector should also be engaged in consultations.

Relevance of institutional policy frameworks to free, prior and informed consent

23. Participants from the United Nations system and intergovernmental organizations discussed the development of institutional policy frameworks that operationalized the principle of free, prior and informed consent. It was stressed that, at the multilateral level, the principle of participation was central to the Common Country Assessment and the United Nations Development Assistance Framework as well as to the strategies for the achievement of the Millennium Development Goals. UNDP emphasized its policy on indigenous peoples, which specifically addressed free, prior and informed consent in planning and programming, issues of resettlement, and indigenous knowledge. There were no clear mechanisms for redress in cases where the principle of free, prior and informed consent was not respected, although programmes had been delayed in cases where there were problems in this area. UNDP specifically encouraged the establishment of civil society advisory bodies at the national level that would allow consultations with indigenous peoples.

24. The International Labour Organization (ILO) discussed the principles of consultation and participation that were fundamental to its Convention concerning indigenous and tribal peoples in independent countries (No. 169), and highlighted the fact that, inter alia, the elements of good faith, representativity, and decision-making through indigenous peoples' own methodologies were essential to free, prior and informed consent. Consultation and participation have been central issues in the implementation of Convention No. 169, and pertain not only to development projects, but to broader issues of governance.

25. IFAD discussed how the underlying principles within free, prior and informed consent were embedded in its strategic framework. IFAD sought indigenous peoples' participation in all stages of the project cycle and believed that participation involved not only planning and implementation but also the management of resources. IFAD emphasized the need for capacity-building, which would strengthen the ability of indigenous peoples, Governments and the intergovernmental system to negotiate.

26. The World Bank discussed the revision of its policy on indigenous peoples (conversion of Operational Directive (OD) 4.20 to draft Operational Policy (OP)/Bank Procedures (BP) 4.10). The revised policy was mostly intended to clarify ambiguities, simplify project processing requirements, and distinguish between mandatory elements and advisory or good practice elements, and required social impact assessments for any project. The Bank was also developing an Indigenous Peoples Guidebook and solicited comments in the process of its development. The Board of Executive Directors of the Bank would adopt a process of free, prior and informed consultation. The Bank's draft policy was open for comments and concerns before its final adoption by the Board. That the revised draft policy shifted the burden of proof for broad community support from the borrowing Government to the staff and management of the Bank, was a significant development.

27. Some participants stated that the World Bank's revised policy process should proceed in coordination with the Permanent Forum on Indigenous Issues, and the Working Group on Indigenous Peoples, which were trying to develop free, prior and informed consent further.

28. The Inter-American Development Bank (IADB) discussed the evolution of its policies that contained elements of free, prior and informed consent, including its resettlement policy, which recognized the customary rights of indigenous peoples and their informed consent. IADB highlighted elements of a consent-based approach to include capacity for negotiation, effective safeguards against adverse effects, and balancing of needs. Its draft operational policy and strategic framework supported participatory approaches and required consent, particularly on projects that would have adverse impacts. IADB also encouraged co-management or self-management of projects.

29. Participants also noted that the policies of donor Governments on free, prior and informed consent were important as well and encouraged their active involvement in this area.

Special issues and free, prior and informed consent in relation to special areas of work

30. A presentation on intellectual property and traditional knowledge by WIPO considered different objectives for the use of, and forms of protection for, traditional knowledge. It was pointed out that the principle of free, prior and informed consent was under active consideration in wide stakeholder discussions on the subject and was receiving fairly broad support. The free, prior and informed consent principle in the context of intellectual property can mean defensive protection in which any use of traditional knowledge, and in particular acquisition of intellectual property rights over traditional knowledge and derivatives thereof, without the prior consent of the community, can be prevented. Free, prior and informed consent can also support positive forms of protection, in which, for example, a community would have the right to authorize any use or commercialization of its knowledge, either by itself or by a third party, that would be to the community's financial and other advantage. Both defensive and positive forms of protection were valid objectives and were not, it was pointed out, necessarily mutually exclusive; moreover, decisions regarding which directions were to be taken were entirely in the hands of relevant communities. Precisely what free, prior and informed consent means in practice in this context, and to which forms and uses of traditional knowledge the principle should apply, were still under discussion. Free, prior and informed consent was also being discussed in relation to the intellectual property aspects of access to, and benefit-sharing in, genetic resources.

31. Some participants raised concerns over the issue of public domain and intellectual property. They stated that although indigenous communities could achieve a form of defensive protection through the documentation and public disclosure of their knowledge, particularly insofar as patents were concerned, whereby their traditional knowledge could not be patented for private gain, in certain cases the public domain concept might harm indigenous communities. For example, placing cultural materials in the public domain facilitated their use by third parties in making adaptations protected as new works under copyright. Sometimes indigenous traditional knowledge had entered into the public domain without free, prior and informed consent. WIPO pointed out that whether or not to document and/or disclose its knowledge was a decision only the community could and should make.

32. Concern was also raised over commercialization of traditional knowledge and genetic resources, particularly without the consent of indigenous communities.

33. The secretariat of the Convention on Biological Diversity discussed article 8 (j) of the Convention,[2] the Convention's main traditional knowledge provision, whereby the parties thereto agree to undertake to preserve, maintain and promote the traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biological diversity. The Convention encourages parties to implement national legislation to protect traditional knowledge. Article 8 (j) also requires that traditional knowledge of indigenous and local communities be used only with their "approval", which implies that their prior informed consent is required; article 8 (j) further requires that benefits arising from the application of traditional knowledge, innovations and practices should be shared equitably with the indigenous communities concerned.

Examples of the application of free, prior and informed consent at the national and international levels

34. Countries of the Andean region of Latin America had demonstrated some positive recognition of genetic resources as the property of indigenous peoples. Andean countries decided that a contract on genetic resources and traditional knowledge drawn up with indigenous peoples had to be annexed to the principle contract on genetic resources; otherwise, the principle contract could be declared null and void.

35. Some participants observed that there had been some positive experiences in respect of free, prior and informed consent involving the Inuit and Haida peoples in Canada. A good example of joint decision-making was the agreement between the Voisey Bay Nickel Company, the Innu Nation and the Labrador Inuit Association. The Voisey Bay agreement recognized the constitutional rights to land of the Innu, and that mining could go ahead only if the Innu people had provided their consent. In practical terms, this meant the involvement of indigenous peoples in project design, employment, environmental protection, social security and cultural protection measures. Another good example was the landmark *Haida* case in which the Supreme Court of Canada ruled that the Governments of Canada and the provinces had a legal duty to consult, and to accommodate the concerns of, indigenous peoples when a Government had knowledge of the potential existence of a right or title to lands, and contemplated conduct that might adversely affect them. The achievement of this decision, however, required significant resources on the part of the indigenous peoples of Canada.

36. Another example, provided by the Russian Federation, was the outcome of the case involving the Gazprom gas exploration project in the Yamal-Nenetz autonomous district: An ethnologic study conducted with the help of academic experts commissioned by the Russian Association of Indigenous Peoples of the North (RAIPON), which had concluded that the project would have negative effects on the community, caused Gazprom to stop its exploration.

37. Participants were informed of the international instruments relevant to free, prior and informed consent (see annex IV for a list of sources of elements related to free, prior and informed consent in international law and practice) and learned of a number of cases in international law practice involving that issue. Particularly

important has been the decision of the Inter-American Court of Human Rights in the case of *The Mayagna (Sumo) Awas Tingni Community* v. *Nicaragua*, as well as the views of the Human Rights Committee on a number of Saami and other indigenous-related cases decided under the Optional Protocol[3] to the International Covenant on Civil and Political Rights.[4] Moreover, the Committee on the Elimination of Racial Discrimination made important pronouncements in this area in its General Recommendation on the rights of indigenous peoples, adopted by the Committee on 18 August 1997.[5]

38. Reference was also made to the recent United Nations Seminar on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Peoples, held in Geneva from 15 to 17 December 2003. Paragraphs 4 and 7 of the conclusions and recommendations of the Seminar (E/CN.4/2004/111) emphasize that the process of negotiation and seeking consent is the most effective way of producing much-needed practical recommendations to facilitate the realization of indigenous peoples' rights and is the most appropriate means to approach conflict resolution of indigenous issues.

39. UNICEF noted the specific rights of children that are relevant to free, prior and informed consent under the Convention on the Rights of the Child,[6] in particular in cross-cultural and inter-generational processes. Especially important is article 12 of the Convention on the right of children to express their views freely. A number of examples relevant to free, prior and informed consent were provided from UNICEF work on education in Guatemala and Bolivia.

III. Conclusions and recommendations

Conclusions

40. Participants shared their views on the principle and the practices of free, prior and informed consent. Progress has been made towards a common understanding of the methodologies regarding free, prior and informed consent. Policies of various United Nations and other intergovernmental organizations recognize this principle. Inter-agency policy frameworks such as the United Nations Development Assistance Framework and the Common Country Assessment, which encompass a human rights approach to development, place meaningful participation and attention to vulnerable groups at their core. It is imperative that the views and effective participation of indigenous peoples should be at the centre of policies for the implementation of the United Nations Millennium Development Goals, as part of the Millennium Declaration. Various international instruments, such as the ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries, and the Convention on Biological Diversity, as well as pronouncements of international human rights treaty bodies, provide a normative basis for free, prior and informed consent.

41. Many participants believed that free, prior and informed consent, as a substantive framework was integral to the exercise of the right of self-determination by indigenous peoples and was an integral component of their rights to lands, territories and resources.

42. As an important methodology, free, prior and informed consent is an evolving principle and its further development should be adaptable to different realities. It is recognized that not consulting indigenous peoples who are the end-users — and sometimes the victims — of development projects may lead to delays, lack of sustainability, conflicts and, finally, loss of their resources. Free, prior and informed consent should be viewed as a process that could possibly lead towards equitable solutions and evolutionary development which may lead, in their turn, to co-management and decision-making. Many indigenous representatives believe that any given process of free, prior and informed consent may result in consent or non-consent and that neither outcome should be regarded as good or bad or be predetermined, as long as appropriate mechanisms are in place.

43. Some examples presented at the Workshop have shown that the legal norms, administrative measures and methodologies adopted in relation to free, prior and informed consent have been used and should continue to be used to build a culture of respect and mutual understanding in the relations between indigenous peoples, States, intergovernmental organizations and the private sector in development projects that affect indigenous peoples' land, territories, and resources and their ways of life.

44. Based on existing international and national policies, standards and practices, as well as national and international jurisprudence, a number of areas of relevance and elements emerge towards a common practical understanding of free, prior and informed consent, as follows:

45. Main areas where FPIC is relevant:

- In relation to indigenous lands and territories, including sacred sites (may include exploration, such as archaeologic explorations, as well as development and use).
- In relation to treaties, agreements and other constructive arrangements between States and indigenous peoples, tribes and nations.
- In relation, but not limited, to extractive industries, conservation, hydro-development, other developments and tourism activities in indigenous areas, leading to possible exploration, development and use of indigenous territories and/or resources.
- In relation to access to natural resources including biological resources, genetic resources and/or traditional knowledge of indigenous peoples, leading to possible exploration, development or use thereof.
- In relation to development projects encompassing the full project cycle, including but not limited to assessment, planning, implementation, monitoring, evaluation and closure, whether the projects are directed towards indigenous communities or, while not directed towards them, may affect or impact upon them.
- In relation to United Nations organizations and other intergovernmental organizations that undertake studies on the impact of projects to be implemented in indigenous peoples' territories.

- **In relation to policies and legislation dealing with or affecting indigenous peoples.**
- **In relation to any policies or programmes that may lead to the removal of their children, or their removal, displacement or relocation from their traditional territories.**

46. **Elements of a common understanding of free, prior and informed consent:**

(i) **What**

- ***Free* should imply no coercion, intimidation or manipulation.**
- ***Prior* should imply that consent has been sought sufficiently in advance of any authorization or commencement of activities and that respect is shown for time requirements of indigenous consultation/consensus processes.**
- ***Informed* should imply that information is provided that covers (at least) the following aspects:**
  - a. **The nature, size, pace, reversibility and scope of any proposed project or activity;**
  - b. **The reason(s) for or purpose(s) of the project and/or activity;**
  - c. **The duration of the above;**
  - d. **The locality of areas that will be affected;**
  - e. **A preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks and fair and equitable benefit-sharing in a context that respects the precautionary principle;**
  - f. **Personnel likely to be involved in the execution of the proposed project (including indigenous peoples, private sector staff, research institutions, government employees and others);**
  - g. **Procedures that the project may entail.**
- ***Consent***

47. **Consultation and participation are crucial components of a consent process. Consultation should be undertaken in good faith. The parties should establish a dialogue allowing them to find appropriate solutions in an atmosphere of mutual respect in good faith, and full and equitable participation. Consultation requires time and an effective system for communicating among interest-holders. Indigenous peoples should be able to participate through their own freely chosen representatives and customary or other institutions. The inclusion of a gender perspective and the participation of indigenous women are essential, as well as participation of children and youth, as appropriate. This process may include the option of withholding consent.**

48. **Consent to any agreement should be interpreted as indigenous peoples have reasonably understood it.**

(ii) When

- **FPIC should be sought sufficiently in advance of commencement or authorization of activities, taking into account indigenous peoples' own decision-making processes, in phases of assessment, planning, implementation, monitoring, evaluation and closure of a project.**

(iii) Who

- **Indigenous peoples should specify which representative institutions are entitled to express consent on behalf of the affected peoples or communities. In free, prior and informed consent processes, indigenous peoples, United Nations organizations and Governments should ensure a gender balance and take into account the views of children and youth, as relevant.**

(iv) How

- **Information should be accurate and in a form that is accessible and understandable, including in a language that the indigenous peoples will fully understand. The format in which information is distributed should take into account the oral traditions of indigenous peoples and their languages.**

(v) Procedures/mechanisms

- **Mechanisms and procedures should be established to verify free, prior and informed consent as described above, inter alia, mechanisms of oversight and redress, including the creation of national ones.**
- **As a core principle of free, prior and informed consent, all sides in a FPIC process must have equal opportunity to debate any proposed agreement/development/project. "Equal opportunity" should be understood to mean equal access to financial, human and material resources in order for communities to fully and meaningfully debate in indigenous language(s), as appropriate, or through any other agreed means on any agreement or project that will have or may have an impact, whether positive or negative, on their development as distinct peoples or an impact on their rights to their territories and/or natural resources.**
- **Free, prior and informed consent could be strengthened by establishing procedures to challenge and to independently review these processes.**
- **Determination that the elements of free, prior and informed consent have not been respected may lead to the revocation of consent given.**

49. **It is recommended that all actors concerned, including private enterprise, pay due attention to these elements.**

50. **In summary, while there were challenges to the implementation of free, prior and informed consent, in general, most participants considered that the favourable outcomes of a free, prior and informed consent process far outweighed the difficulties of such a process.**

Recommendations for the consideration of the Permanent Forum on Indigenous Issues

General

51. **Noting the coordinating role of the Permanent Forum on Indigenous Issues regarding indigenous issues and the United Nations system (see para. 2 (b) of Economic and Social Council resolution 2000/22 of 28 July 2000) the Forum should encourage the contribution of all relevant United Nations bodies and mechanisms, and intergovernmental organizations, as well as the contributions of Governments and indigenous organizations, towards the further policy development and operationalization of free, prior and informed consent as a rights-based approach to development throughout the various United Nations processes.**

52. **The Permanent Forum on Indigenous Issues should coordinate discussions and various processes concerning free, prior and informed consent, the protection and sustainable use of traditional knowledge, and processes of access to and benefit-sharing of genetic resources currently taking place within the international arena and specifically in WIPO, the process of the Convention on Biological Diversity, the United Nations Conference on Trade and Development (UNCTAD), UNESCO, the Working Group on Indigenous Populations and other entities, to provide a better coordinated approach to this issue and to ensure more comprehensive and holistic outcomes.**

53. **Further noting that the Convention process, through section H (Development of elements of sui generis systems for the protection of traditional knowledge, innovations and practices) of decision VII/16 (article 8 (j) and related provisions) of the Conference of the Parties to the Convention, is currently developing a process and set of requirements governing prior informed consent, mutually agreed terms and equitable sharing of benefits with respect to traditional knowledge, innovations and practices associated with genetic resources and relevant for the conservation and sustainable use of biological diversity, the Permanent Forum on Indigenous Issues should request the Convention secretariat to consult with the Forum, to take into account the conclusions and recommendations of the Workshop as appropriate, and to transmit the results of its current work to the Forum when completed.**

54. **Further noting that the Working Group on Indigenous Populations is currently working on the further legal clarification of free, prior and informed consent, the Permanent Forum on Indigenous Issues should also request that the Working Group take into account the conclusions and recommendations of the Workshop and consult with the Forum thereon, and transmit the results of its work to the Forum when completed.**

55. **The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples should take into account the findings of the present report and consider how, in his own work and in line with his mandate, he can promote the principle of free, prior and informed consent.**

Participation

56. **Indigenous peoples need more opportunities to participate in all matters affecting them and the Permanent Forum on Indigenous Issues, recalling its early recommendations, should again recommend "participation" as a chief strategy through which to progress towards equity for indigenous peoples.**

57. **Enhanced participation of indigenous peoples should be encouraged by all organizations engaged in work relevant to indigenous peoples, such as the secretariat of the Convention on Biological Diversity in its work concerning traditional knowledge as well as access to and benefit sharing of genetic resource regimes, the World Health Organization (WHO) in its work concerning traditional health systems, the World Bank and other international financial institutions in their development work, WIPO in the ongoing work of its Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore and UNESCO in its current processes for the elaboration of a convention on the protection of the diversity of cultural contents and artistic expressions.**

58. **The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, and other relevant United Nations organizations, should continue to address "public domain issues" in relation to free, prior and informed consent and the protection of traditional knowledge and cultural expressions and recommend possible solutions as an urgent priority.**

59. **The Permanent Forum on Indigenous Issues should be invited to participate in the work of the Working Group on Indigenous Populations concerning free, prior and informed consent, in order to present the outcomes of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples with a view to facilitating the coordination of work on this issue.**

60. **The Office of the United Nations High Commissioner for Human Rights should be encouraged to continue its facilitation of dialogue between indigenous peoples and extractive industries and should be invited to consider how the issue of free, prior and informed consent can be included as a focus at its future workshop.**

Capacity-building

61. **Governments, the private sector and indigenous peoples should be aware of the principles of free, prior and informed consent when planning development projects. The United Nations system should contribute to the awareness-raising of Governments and indigenous peoples in this regard, especially within the current context of the Millennium Development Goals.**

62. **Governments, international organizations, the private sector and indigenous peoples' organizations should develop the capacity of indigenous women and youth, as well as children, so that they may meaningfully participate in the process of free, prior and informed consent within their communities.**

63. **The Permanent Forum on Indigenous Issues should disseminate existing codes of conduct to corporations and other entities, and to indigenous peoples, in order to enhance their capacity to ensure that these principles are adhered to.**

64. **The Permanent Forum on Indigenous Issues should encourage and welcome the efforts of academics and experts to closely work with indigenous peoples in order to foster capacity-building and provide analysis of impact assessments of development projects that may affect them. In doing so, the Forum should build on the existing work of the Convention on Biological Diversity including the Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities (annex to sect. F of decision VII/16 of the Conference of the Parties to the Convention), which, among other things, incorporate biodiversity-related issues into environmental assessments.**

65. **The Permanent Forum on Indigenous Issues should work with international financial institutions to foster financial and policy support for capacity-building and governance mechanisms of indigenous peoples so as to enhance their participation in development activities and improve the overall interaction between internal indigenous governance mechanisms and State agencies at the local and national levels.**

66. **The Inter-Agency Support Group on Indigenous Issues (IASG), in cooperation with the Permanent Forum on Indigenous Issues, should develop a handbook on indigenous issues, including methodologies and elements of a common understanding on free, prior and informed consent for United Nations Country Teams in their work on the Millennium Development Goals, PRSPs and CCA/UNDAF. This handbook should be flexible and user-friendly, and should take into account the diversity of interests of the stakeholders in the implementation of free, prior and informed consent. In particular, United Nations Country Teams and UNDP should share their experiences on the establishment of civil society advisory committees at the national level in addition to the pilot committees on indigenous issues established through the Human Rights Strengthening (HURIST) Programme.**

67. **ILO should conduct a study on "good practices" with specific reference to the principles of consultation and participation, as outlined in Convention No. 169, with a view to using this information to develop flexible operational tools for use in capacity-building, in order that those tools may be used for training and capacity-building of all interest-holders within free, prior and informed consent processes, especially indigenous peoples.**

Good practices

68. **Case studies should be undertaken to analyse current practices of principles of free, prior and informed consent. The Permanent Forum on Indigenous Issues, with the Inter-Agency Support Group on Indigenous Issues, should prepare a practical handbook of the good practices of free, prior and informed consent with contributions from the United Nations system, other intergovernamental organizations, the private sector, Governments and**

indigenous organizations. In this regard, the Forum should call upon all concerned to submit examples of such practices for this purpose.

Notes

[1] See General Assembly resolution 55/2.

[2] United Nations, *Treaty Series*, vol. 1760, No. 30619.

[3] See General Assembly resolution 2200 A (XXI), annex.

[4] Ibid.

[5] *Official Records of the General Assembly, Fifty-second Session, Supplement No. 18* (A/52/18), annex V.

[6] General Assembly resolution 44/25, annex.

Annex I

Agenda and programme of work of the International Workshop on Methodologies regarding Free, Prior and Informed Consent and Indigenous Peoples

(New York, 17-19 January 2005)

Monday, 17 January

10 a.m.-10.30 a.m.

Opening of the Workshop by Mr. Johan Schölvinck, Director, Division for Social Policy and Development

Election of Chairperson

Election of Rapporteur

10.30 a.m.-1 p.m.

Item 1
Overview of a current understanding of FPIC as a methodological issue, in activities relating to indigenous peoples: significance and challenges

Ms. Victoria Tauli-Corpuz (Tebtebba Foundation and member, Permanent Forum on Indigenous Issues)

Mr. Rodrigo De La Cruz ("Llamado de la Tierra")

Item 3
Policy frameworks on or relevant to FPIC at inter-agency level, including CCA/UNDAF PRSPs, MDGs

Mr. Turhan Saleh (UNDP)

Mr. Detlef Palm (UNICEF)

3 p.m.-6 p.m.

Item 2
Policy frameworks on or relevant to FPIC within each intergovernmental organization

Ms. Francesca Thornberry (ILO)

Mr. Salman Salman (World Bank)

Ms. Alejandra Pero (UNDP)

Ms. María Da Cunha (IADB)

Item 4
Special issues and FPIC in relation to the work of intergovernmental organizations (cultural diversity and development; participation and the human rights approach to development; gender equality; traditional knowledge; natural resources; health, including sexual and reproductive health; education; relocation)

Mr. Rama Rao (WIPO)

Mr. John Scott (secretariat of the Convention on Biological Diversity)

Mr. Charles Sena (Ogiek Rural Integral Projects)

Tuesday, 18 January

10 a.m.-1 p.m.

Items 2 and 4 (*continued*)

Item 5
Examples of the application of the principle of FPIC at the national and international levels (legislation, treaty-making, treaty supervision, project planning, application and evaluation)

Mr. Mattias Ahren (Saami Council)

Ms. Vanda Altarelli (IFAD)

Ms. Maivân Clech Lâm (American Indian Law Alliance)

Mr. Parshuram Tamang (member, Permanent Forum on Indigenous Issues)

Ms. Vanessa Sedletzki (UNICEF)

Ms. Olga Kuzivanova (Komi Voityr)

3 p.m.-6 p.m.

Item 5 (*continued*)

Wednesday, 19 January

10 a.m.-1 p.m.

Item 6
Lessons and challenges in the application of FPIC: towards a common inter-agency operational understanding of FPIC

3 p.m.-6 p.m.

Item 7
Adoption of recommendations to the Permanent Forum on Indigenous Issues

Adoption of the report and closure of the Workshop

Annex II

Documentation

Title	*Symbol and language*
Draft agenda	PFII/2005/WS.2/1 Original: English
Draft programme of work	PFII/2005/WS.2/2 Original: English
Contribution of the secretariat of the Convention on Biological Diversity	PFII/2005/WS.2/3 Original: English
Contribution of ILO	PFII/2005/WS.2/4 Original: English
Contribution of Mr. Rodrigo De La Cruz	PFII/2005/WS.2/5 Original: Spanish
Contribution of the Indian Law Resource Center	PFII/2005/WS.2/6 Original: English
Contribution of Ms. Maivân Clech Lâm	PFII/2005/WS.2/7 Original: English
Contribution of Mr. Parshuram Tamang	PFII/2005/WS.2/8 Original: English
Contribution of Mr. Charles Sena	PFII/2005/WS.2/9 Original: English
Contribution of IFAD	PFII/2005/WS.2/10 Original: English
Contribution of WIPO	PFII/2005/WS.2/11 Original: English
Contribution of UNICEF	PFII/2005/WS.2/12 Original: English
	PFII/2005/WS.2/12/Add.1 Original: Spanish
Contribution of the Office of the United Nations High Commissioner for Human Rights	E/CN.4/Sub.2/AC.4/2004/4 Original: English
Contribution of UNESCO	PFII/2005/WS.2/13 and Add.1 Original: English
Contribution of FAO	PFII/2005/WS.2/14 Original: English
Contribution of UNDP	PFII/2005/WS.2/15 Original: English
Contribution of Indonesia	PFII/2005/WS.2/16 Original: English
Contributions of Canada	PFII/2005/WS.2/17 and Add.1 and 2 Original: English/French/Spanish

Annex III

Attendance

Experts

1. Mr. Mattias **Ahren** (Saami Council)
2. Mr. Merle **Alexander** (Canadian Indigenous Biodiversity Network)
3. Ms. Vanda **Altarelli** (IFAD)
4. Mr. Julian **Burger** (Office of the United Nations High Commissioner for Human Rights)
5. Ms. Jocelyn **Cariño-Nettleton** (Tebtebba Foundation)
6. Mr. Estebancio **Castro** (International Indian Treaty Council)
7. Ms. Maria **Da Cunha** (IADB)
8. Mr. Rodrigo **De La Cruz** ("Llamado de la Tierra")
9. Ms. Nahanni **Fontaine** (Southern Chiefs' Organization)
10. Ms. Violet **Ford** (Inuit Circumpolar Conference)
11. Mr. Zosimo **Hernandez** (UNICEF, Mexico)
12. Ms. Adriana **Herrera** (FAO)
13. Ms. Olga **Kuzivanova** (Komi Voityr)
14. Ms. Maivân Clech **Lâm** (Ralph Bunche Institute, City University of New York — American Indian Law Alliance)
15. Mr. Tyge **Lehmann** (Denmark)
16. Mr. Wilton **Littlechild** (member, Permanent Forum on Indigenous Issues)
17. Mr. Armand **Mackenzie** (Innu Council of Nitassinan)
18. Ms. Ellen **McGuffie** (Department of Public Information of the United Nations Secretariat)
19. Mr. Michael **Monis** (Holy See)
20. Ms. Iulia **Motoc** (member, Working Group on Indigenous Populations)
21. Mr. Ida **Nicolaisen** (member, Permanent Forum on Indigenous Issues)
22. Mr. Detlef **Palm** (UNICEF)
23. Ms. Alejandra **Pero** (UNDP)
24. Mr. S. Rama **Rao** (WIPO)
25. Mr. Salman **Salman** (World Bank)
26. Mr. John **Scott** (secretariat of the Convention on Biological Diversity)
27. Ms. Vanessa **Sedletzki** (UNICEF)
28. Mr. Charles **Sena** (Ogiek Rural Integral Projects)

29. Mr. Parsharam **Tamang** (member, Permanent Forum on Indigenous Issues)

30. Ms. Victoria **Tauli-Corpuz** (Tebtebba Foundation and member, Permanent Forum on Indigenous Issues)

31. Ms. Francesca **Thornberry** (ILO)

32. Mr. Turhan **Saleh** (UNDP)

33. Mr. Greg **Young-Ing** (Indigenous Peoples Caucus' — Creators' Rights Alliance)

34. Ms. Ola **Zahran** (WIPO)

Observers

1. Mr. Alejandro **Alday Gonzalez** (Mexico)

2. Ms. Claudia **Alemán** (Peru)

3. Mr. Esturado **Alvelais** (Guatemala)

4. Ms. Ghazal **Badiozamani** (secretariat of the United Nations Forum on Forests)

5. Ms. Sylvia **Batt** (Canada)

6. Msgr. Leo **Cushley** (Holy See)

7. Ms. Andrea **Durango** (UNIFEM)

8. Ms. Jayariyu **Farias Monticl** (Fundacion Wayuunaiki)

9. Ms. Miriam Anne **Frank** (Netherlands Centre for Indigenous Peoples)

10. Ms. Katarina **Fried** (Sweden)

11. Mr. Alfatih **Hamad** (UNESCO)

12. Mr. Terence **Hay Edie** (UNDP/Global Environment Facility Small Grants Programme)

13. Ms. Ana Maria **Hermoso** (WHO)

14. Mr. Conrod **Hunte** (secretariat of the Convention on Biological Diversity)

15. Ms. Sara **Isman** (European Community)

16. Ms. Yuko **Ito** (Japan)

17. Ms. Alma **Jenkins Acosta** (UNICEF — Latin America and the Caribbean)

18. Mr. Dicky **Komar** (Indonesia)

19. Mr. Sergey **Kondratiev** (Russian Federation)

20. Ms. Katarina **Kuai** (UNDP)

21. Ms. Laoura **Lazouras** (South Africa)

22. Mr. Wayne **Lord** (Canada)

23. H.E. Archbishop Celestino **Migliore** (Holy See)

24. Mr. Eric I. **Nürnberg** (Norway)

25. Ms. Olivia **Osias-Magpile** (Philippines)

26. Ms. Elizabeth **Sanderson** (Canada)

27. Mr. John **Sinclair** (Canada)

28. Mr. Bonanza P. **Taihitu** (Indonesia)

29. Ms. Romy **Tincopa** (Peru)

30. Ms. Angel **Valencia** (International Indian Treaty Council)

31. Mr. Carlos **Vergara** (Department of Political Affairs of the United Nations Secretariat)

32. Ms. Marilyn **Whitaker** (Canada)

33. Ms. Michelle **Zack** (United States of America)

Annex IV

Sources of elements related to free, prior and informed consent and indigenous peoples in international law and practice*

1. International Covenant on Civil and Political Rights

Articles 1 and 27 (for the full text, please see web site: http://www.ohchr.org/english/law/ccpr.htm)

2. International Covenant on Economic, Social and Cultural Rights

Article 1 (for the full text, please see web site: http://www.ohchr.org/english/law/cescr.htm)

3. Convention on Biological Diversity

Articles 8 (j) and 15 (for the full text, please see web site: http://www.biodiv.org/convention/articles.asp)

4. ILO instruments and other sources

ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries

Articles 6, 7 and 15 (for the full text, please see web site: http://www.ilo.org/ilolex/english/convdisp2.htm)

Reports of the Committees set up to examine representations alleging non-observance of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), made under article 24 of the ILO Constitution

- Representation made by the Authentic Workers' Front (FAT), concerning Mexico
- Representation made by the Central Unitary Workers' Union (CUT) and the Colombian Medical Trade Union Association, concerning Colombia
- Representation made by the Union of Academics of the National Institute of Anthropology and History (SAINAH), concerning Mexico
- Representation made by the Union of Workers of the Autonomous University of Mexico (STUNAM) and the Independent Union of Workers of La Jornada (SITRAJOR), concerning Mexico
- Representation made by the Confederación Ecuatoriana de Organizaciones Sindicales Libres (CEOSL), concerning Ecuador

* The present list of sources, which is not exhaustive, is based on the documents submitted to, and the presentations made at, the Workshop.

- Representation made by the National Confederation of Trade Unions of Greenland (Sulinermik Inuussutissarsiuteqartut Kattuffiat-SIK), concerning Denmark
- Representation made by the General Confederation of Workers of Peru (CGTP), concerning Peru
- Representation made by the Radical Trade Union of Metal and Associated Workers, concerning Mexico
- Representation made by the Bolivian Central of Workers (COB), concerning Bolivia
- Representation made by the Central Unitary Workers' Union (CUT), concerning Colombia

Individual observations by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) concerning the Indigenous and Tribal Peoples, Convention, 1989 (No. 169)

- Norway (ratification 1990); published: 2004
- Guatemala (ratification 1996); published: 2004
- Denmark (ratification 1996); published: 2004
- Costa Rica (ratification 1993); published: 2004
- Colombia (ratification 1991); published: 2004
- Bolivia (ratification 1991); published: 2004
- Peru (ratification 1994); published: 2003
- Paraguay (ratification 1993); published: 2003
- Ecuador (ratification 1998); published: 2003
- Denmark (ratification 1996); published: 2003
- Colombia (ratification 1991); published: 2003
- Bolivia (ratification 1991); published: 2003
- Guatemala (ratification 1996); published: 2002
- Peru (ratification 1994); published: 1999
- Mexico (ratification 1990); published: 1999
- Mexico (ratification 1990); published: 1997

ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169): A Manual **(Geneva, International Labour Office, 2003)**

5. Draft United Nations declaration on the right of indigenous peoples

Articles 10, 12, 20, 27 and 30 (for the full text, please see document E/CN.4/Sub.2/Res/1994/45)

6. Proposed American declaration on the rights of indigenous peoples

Article XIII. Right to environmental protection (for the full text, please see web site: http://www.cidh.oas.org/Indigenous.htm)

7. International human rights treaty bodies

- Concluding observations of the Committee on Economic, Social and Cultural Rights: Colombia, 30 November 2001 (E/C.12/Add.1/74)
- General comment 23 of the Human Rights Committee on article 27 of the International Covenant on Civil and Political Rights (E/CN.4/Sub.2/2001/21, p. 55)
- General Recommendation XXIII (51) on the rights of indigenous peoples, adopted by the Committee on the Elimination of Racial Discrimination at its 1235th meeting, on 18 August 1997 (A/52/18, annex V) (E/CN.4/Sub.2/2001/21, p. 54)
- Concluding observations of the Committee on Economic, Social and Cultural Rights: Ecuador (E/C.12/1/Add.100 of 7 July 2004)
- Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people to the Commission on Human Rights at its sixtieth session, 2004 (E/CN.4/2004/80 and Add.1-4 and Add.4/Corr.1)

(For the full texts of instruments, please see web site: http://www.ohchr.org/english/law/index.htm)

8. Inter-American Court of Human Rights

Decision on the case of *The Mayagna (Sumo) Awas Tingni Community* v. *Nicaragua*, 2000

(For the full text, please see web site: http://www.corteidh.or.cr/seriecpdf_ing/seriec_79_ing.pdf)

9. Instruments of the Convention on Biological Diversity

- Akwe: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities